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NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 09-16160-A-13
Juan Enrique Hurtado,
Debtor.

Patti Jones, Adv. No. 11-1102
Plaintiff,

vs.
Juan Enrique Hurtado,
Defendant.

MEMORANDUM

This motion for fees follows an adversary proceeding arising out of a construction dispute. Urban Design Concepts, Inc. ("URDECO") built custom and spec homes. It was owned by Hurtado and Eric Blossman ("Blossman"). Hurtado was a licensed contractor, under whose license URDECO constructed homes. As an inducement for Jones to enter a construction contract with URDECO to build Jones's custom home, Hurtado told Jones that her house plans, which had been drawn by a licensed architect, were not drawn in a workmanlike fashion, that he was a licensed architect, and that he would correct her house plans.

1 URDECO and Jones signed a Residential Construction Contract
2 ("construction contract") whereby URDECO promised to build Jones's
3 custom home in exchange for approximately \$2.3 million dollars. The
4 contract did not mention Hurtado's architectural license or promise
5 to perform architectural services.

6 For approximately the next year, URDECO performed construction
7 services on Jones's residence, and Hurtado made design changes to the
8 home. Jones's relationship with URDECO was marked by disagreements
9 and, eventually, URDECO and Jones parted ways. And Jones finished
10 the home with another contractor but was forced to redo (at
11 considerable expense) much of Hurtado's design work.

12 Dissatisfied with URDECO's work, Jones brought suit against
13 URDECO, Hurtado, Blossman, and others. *Jones v. Urban Design*
14 *Concepts, Inc.*, No. 37-2007-000054451-CU-JR-NC (Cal. Super. Ct.
15 2007). The state court action remains unresolved.

16
17 Soon after the action was filed, Jones and Hurtado met and
18 negotiated a settlement ("settlement agreement"), which was confirmed
19 by email but not further memorialized. The settlement agreement
20 provided that (1) Hurtado would resolve all liens against Jones's
21 residence; (2) Hurtado would indemnify Jones from all claims made by
22 subcontractors; (3) Hurtado and Jones would work together to recover
23 monies from three subcontractors; (4) Hurtado would repay a debt to
24 Jones based on a deposit for cabinetry given to Kiesler Enterprises
25 of \$81,365 plus interest; (5) Hurtado would repay Jones's \$125,000
26 deposit to URDECO; (6) Hurtado would repay "[Jones's] legal fees
27 (approximately \$30,000 to date), with interest"; (7) Hurtado and
28 "other parties to the state court action" would stipulate to judgment

1 to enforce the settlement; and (8) Jones would grant Hurtado
2 additional time to respond to pending matters in the state court
3 action. Later, Hurtado reneged on the settlement.

4 PROCEDURE

5 Unable to resolve his debt problems, Hurtado filed chapter 13
6 bankruptcy. Jones was not noticed in Hurtado's schedules and did not
7 otherwise know of the bankruptcy until after the bar dates for claims
8 and adversary proceedings.

9 Later, Jones filed this adversary proceeding to determine
10 whether Hurtado owes a debt to Jones that should be excepted from
11 discharge. Jones brought claims for (1) fraud under 11 U.S.C.
12 § 523(a)(2) arising from Hurtado's misrepresentations that he was a
13 licensed architect; (2) embezzlement under 11 U.S.C. § 523(a)(4) by
14 Hurtado personally, or embezzlement by Blossman for which Hurtado was
15 vicariously liable; and (3) failure by Hurtado to schedule the debt
16 timely under 11 U.S.C. § 523(a)(3) resulting in lack of notice to
17 Jones. Hurtado denied these claims and, particularly, denied
18 personally owing Jones any money, noting that any debt owed to Jones
19 was owed by URDECO.

20 After a 7-day trial, Jones prevailed against Hurtado on the
21 claims based on the unsecured-debt exception to discharge, 11
22 U.S.C. § 523(a)(3), and the fraud exception to discharge, 11 U.S.C.
23 § 523(a)(2)(a). *Jones v. Hurtado (In re Hurtado)*, No. 11-1102, 2015
24 WL 2399665 (Bankr. E.D. Cal. May 18, 2015). As to the unsecured-
25 debt exception to discharge, the court ruled that the \$363,089.32
26 debt Hurtado had assumed in the parties' settlement agreement was
27 nondischargeable. As to the fraud exception to discharge, the court
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1 found that \$312,155.14 of the \$363,089.32 assumed debt was also non-
2 dischargeable under 11 U.S.C. § 523(a)(2)(A).

3 The court rendered judgment in favor of Jones on two of her
4 claims, the § 523(a)(3) claim and the § 523(a)(2)(A) claim. But on
5 Jones's § 523(a)(4) claim, the court rendered judgment in favor of
6 Hurtado.

7 Hurtado moved for a new trial. But his request was denied.
8 *Jones v. Hurtado (In re Hurtado)*, No. 11-1102, 2015 WL 5731273
9 (Bankr. E.D. Cal. Sept. 28, 2015). Hurtado has appealed both the
10 judgment and the denial of his motion for a new trial.

11 Twenty-seven days after entry of judgment, Jones filed the
12 present motion requesting attorney's fees of \$101,389.63. Hurtado
13 opposes the motion, arguing that Jones filed the motion untimely,
14 failed to specify the basis for awarding fees, and lacks entitlement
15 to recover fees.

16 JURISDICTION

17 This court has jurisdiction. See 28 U.S.C. §§ 1334, 157(a); 11
18 U.S.C. § 523; General Order No. 182 of the U.S. District Court for
19 the Eastern District of California. That jurisdiction extends to
20 "all civil proceedings arising under title 11, or arising in or
21 related to cases under title 11." 28 U.S.C. § 1334(b).

22 In matters within the court's jurisdiction, the court's
23 adjudicatory authority is classified into matters that are core and
24 non-core. Matters "arising under" and "arising in" a case under
25 title 11 are core, and matters that are "related to" are non-core.

26 Bankruptcy courts may enter final orders and judgments over
27 matters that are both statutorily and constitutionally core. 28
28

1 U.S.C. § 157(b)(1); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.
2 Ct. 1932 (2015). Absent consent of the parties, bankruptcy courts
3 may not finally determine matters that are non-core. 28 U.S.C.
4 § 157(c).

5 Adversary proceedings to except a debt from discharge are core
6 proceedings for which the court may enter final orders and judgments.
7 28 U.S.C. § 157(b)(2)(i); *Carpenters Pension Trust Fund for N. Cal.*
8 *v. Moxley*, 734 F.3d 864, 868 (9th Cir. 2013) (11 U.S.C. § 523(a)(4));
9 *Deitz v. Ford (In re Deitz)*, 469 B.R. 11, 16 (9th Cir. BAP 2012),
10 *aff'd*, 760 F.3d 1038 (9th Cir. 2014) (11 U.S.C. § 523(a)(2)). By
11 implication, that authority extends to fee motions flowing from those
12 adversary proceedings. Fed. R. Bankr. P. 7054(b)(2).

13 Even if the claims in this adversary proceeding were non-core,
14 the parties consented to their resolution by this Court. With
15 express or implied consent of the parties, a bankruptcy court may
16 issue final orders and judgments in non-core matters. 11 U.S.C.
17 § 157(c)(1), (2); *Wellness Int'l*, 135 S. Ct. at 1932. Here, the
18 parties so consented. Status Conf. Hr'g, Sept. 25, 2014.

20 DISCUSSION

21 I. Legal Standards

22 In most instances, a prevailing litigant may not recover
23 attorney's fees from the other party. *Hensley v. Eckerhart*, 461 U.S.
24 424, 429 (1983); *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec.*
25 *Co.*, 549 U.S. 443, 448 (2007) (applying the rule in bankruptcy).
26 Three exceptions to the rule exist, allowing the prevailing party to
27 recover attorney's fees: (1) when an enforceable contract provides
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1 for the recovery of attorney's fees, *Travelers*, 549 U.S. at 448;
2 *Penrod v. AmeriCredit Fin. Servs., Inc. (In re Penrod)*, 2015 WL
3 5730425 (9th Cir. Oct. 1, 2015); (2) when the court exercises its
4 equitable powers to award fees when a party has willfully disobeyed a
5 court order, acted in bad faith or vexatiously, or has conferred a
6 substantial and direct benefit on a class of individuals by that
7 party's litigation efforts, see *Chambers v. NASCO, Inc.*, 501 U.S. 32,
8 45 (1991); or (3) where a statute shifts fees to the losing party,
9 *United States v. Standard Oil Co. of Cal.*, 603 F.2d 100, 103 (1979).

10 A party's claim for attorney's fees based on a statute or
11 contract must be made by post-trial motion. Fed. R. Civ. P.
12 54(d)(2)(A), incorporated by Fed. R. Bankr. P. 7054(b)(2). The party
13 seeking the fee award bears the burden of proof. *Diamond v. John*
14 *Martin Co.*, 753 F.2d 1465, 1467 (9th Cir. 1985) (applying California
15 law); *Fed-Mart Corp. v. Price*, 111 Cal. App. 3d 215 (1980).

16 II. Procedural Objections

17 A. Timeliness of the Motion

18 Rule 54 provides that "unless a statute or court order provides
19 otherwise," a motion for attorney's fees must be filed within 14 days
20 of the entry of judgment. Fed. R. Civ. P. 54(d)(2)(B), incorporated
21 by Fed. R. Bankr. P. 7054(b)(2).

22 Local rules providing litigants a longer period of time to file
23 such a motion are "court order[s] to the contrary." *Tire Kingdom,*
24 *Inc. v. Morgan Tire & Auto, Inc.*, 253 F.3d 1332, 1335 (11th Cir.
25 2001) (per curiam); see *Eastwood v. Nat'l Enquirer, Inc.*, 123 F.3d
26 1249, 1257 (9th Cir. 1997); *Walker v. City of Bogalusa*, 168 F.3d 237,
27 239 (5th Cir. 1999).
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1 By local rule, this court has extended time to file a motion for
2 fees to 28 days after the entry of final judgment. L.R. 293,
3 *incorporated by* LBR 1001-1(c). Since Jones's motion for attorney's
4 fees was filed 27 days after the entry of judgment in this
5 proceeding, it is timely.

6 **B. Prejudice from the Lack of Grounds for the Motion**

7 A motion for attorney's fees must specify the grounds entitling
8 the movant to recover fees. Rule 54(d)(2)(B)(ii), *incorporated by*
9 Fed. R. Bankr. P. 7054(b)(2)(A). Hurtado correctly points out that
10 the motion fails to specify such grounds. See Pl.'s Mot. for Award
11 of Attorney's Fees, filed June 14, 2015, ECF No. 323.

12 But Jones's failure to do so is not fatal in this case. Rule
13 54(d)(2)(B)'s requirement that the motion state "the statute, rule,
14 or other grounds entitling the movant to the award" is very similar
15 to the requirement that motions "state with particularity the grounds
16 for seeking the order" and "state the relief sought." Fed. R. Civ.
17 P. 7(b). Cases construing Rule 7(b) hold that the particularity
18 requirement is satisfied "when no party is prejudiced by a lack of
19 particularity or when the court can comprehend the basis for the
20 motion and deal with it fairly." *Registration Control Sys., Inc. v.*
21 *Compusystems, Inc.*, 922 F.2d 805, 807-08 (Fed. Cir. 1990); *Crowl v.*
22 *M. Chin Realty Trust*, 607 F. Supp. 2d 245, 246 (D. Mass. 2009).

23 Here, Hurtado's arguments in opposition to the motion
24 acknowledge that Jones relied on the terms of the settlement
25 agreement as the basis for her claim for attorney's fees. Hurtado's
26 opposition recognizes that the settlement agreement, and not the
27 construction agreement, forms the basis of Jones's request for
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1 attorney's fees. See Def.'s Opp'n to Pl.'s Mot. for Award of
 2 Attorney's Fees at 4:22-23; see also Def.'s Surreply in Opp'n to
 3 Pl.'s Reply Ex. A. at 2:5, filed July 23, 2015, ECF No. 362.
 4 Moreover, Jones's reply rectifies her error and makes clear the basis
 5 of her claim. Reply to Def.'s Opp'n to Pl.'s Mot. Award of
 6 Attorney's fees at 3:5-10, filed July 16, 2015, ECF # 351. But
 7 because Hurtado's opposition accurately identifies the grounds for
 8 Jones's claim for attorney's fees, Hurtado has not been prejudiced.

9 IV. Claim for Attorney's Fees

10 Jones's entire claim for attorney's fees hinges on a phrase in a
 11 settlement agreement that the parties had entered to resolve their
 12 disputes arising before Hurtado's bankruptcy filing and this
 13 adversary case. In the phrase, Hurtado agrees to "repay . . .
 14 [Jones's] legal fees (approximately \$30,000 to date), with interest."¹
 15 The interpretive question is whether the phrase is (i) a fee-shifting
 16 clause applicable to enforcement or litigation of the settlement
 17 agreement itself (that could shift the cost of litigating the
 18 nondischargeability claims in this adversary case), or (ii) merely a
 19 central component of the parties' bargained-for, settlement exchange
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21 ¹ While the construction contract did contain an attorney's fees
 22 clause, Jones may not rely on it as a basis for her attempt to
 23 recover fees from Hurtado. At the outset, motions for attorney's
 24 fees must specify the basis for such an award. Fed. R. Civ. P.
 25 54(d)(2)(B)(ii). And Jones did not contend that her right to recover
 26 attorney's fees arose from the construction contract. Moreover, fees
 27 are typically recoverable only for actions "on a contract," and
 28 Jones's adversary proceeding was not on a contract to which Hurtado,
 personally, was a party. Further, with exceptions not applicable
 here, it is only *signatories* to an agreement containing an attorney's
 fees clause that may be compelled to pay a prevailing party's
 attorney's fees. See generally Pearl, *California Attorney Fee Awards*
 § 4.39 et seq. (3rd ed. CEB 2015). Hurtado in his individual
 capacity was not a signatory to the construction contract.

1 applicable to attorney's fees Jones had already incurred in the legal
2 dispute leading up to the settlement.

3 State, not federal, law governs the construction of contractual
4 provisions providing for recovery of attorney's fees. *Matter of*
5 *Sheridan*, 105 F.3d 1164, 1167 (7th Cir. 1997); *Mathis v. Exxon Corp.*,
6 302 F.3d 448, 461 (5th Cir. 2002) ("State law controls both the award
7 and the reasonableness of fees awarded where state law provides the
8 rule of decision.")

9 The primary goal in contract interpretation is to effect the
10 parties' mutual intent. Cal. Civ. Code § 1636. "In undertaking this
11 function, a court generally looks to 'objective manifestations of the
12 parties' intent, including the words used in the agreement, as well
13 as extrinsic evidence of such objective matters as the surrounding
14 circumstances under which the parties negotiated or entered into the
15 contract; the object, nature and subject matter of the contract; and
16 the subsequent conduct of the parties.'" *De Anza Enters. v. Johnson*,
17 104 Cal. App. 4th 1307, 1315 (2002) (citation omitted).

18 Where, as here, a contract is capable of two different but
19 reasonable interpretations, it is ambiguous. *Transamerica Ins. Co.*
20 *v. Super. Ct.*, 29 Cal. App. 4th 1705 (1994). Fundamental principles
21 of contract interpretation preponderate in favor of Hurtado on the
22 issue of whether the phrase used was an attorney's fees clause. At
23 the outset, the words used, and the words not used, suggest a meaning
24 other than an attorney's fees clause to be invoked by a future
25 prevailing party who litigated a claim based on the agreement.
26 Missing is the familiar incantation, "In the event of litigation
27 between the parties to enforce this contract, the prevailing party
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1 shall be entitled to reasonable attorney's fees" or similar language.
2 Jones, who drafted the verbiage, is a sophisticated businesswoman,
3 and Hurtado is schooled in the law. Unquestionably, each must be
4 familiar with such clauses. Had they intended a provision that would
5 shift the financial burden of future litigation over the settlement
6 agreement itself, they would have used the words similar to the
7 typical phraseology for a contractual attorney's fees clause, which
8 words would have specifically referenced the contractual disputes or
9 litigation to which the provision applied. But more importantly, the
10 existence of a present promise to "repay," including an estimation of
11 amount (\$30,000), reveals the parties' intent that the provision
12 operate as Hurtado's bargained-for promise to repay attorney's fees
13 that Jones had already incurred in the legal dispute leading up to
14 the settlement.

15 Next, the court considers the context of the provision for fees.
16 The settlement agreement was intended as a global resolution of
17 hostilities, which included a stipulated judgment. *Jones v. Hurtado*
18 (*In re Hurtado*), No. 11-1102, 2015 WL 5731273 *17 (Bankr. E.D. Cal.
19 Sept. 28, 2015). At the time of settlement, the parties did not
20 anticipate further litigation over the settlement itself. This
21 supports the conclusion that the provision was part of the exchanges
22 of value made under the settlement agreement rather than a cost-
23 shifting mechanism that would operate in future disputes over the
24 settlement agreement itself.

25 Lastly, the court applies the interpretive principle that
26 ambiguous terms in a contract should be construed against the party
27 who created the ambiguity. Cal. Civ. Code § 1654; *Crillo v. Curtola*,
28

1 91 Cal. App. 2d 263 (1949) (letter agreement). Jones, not Hurtado,
2 drafted the language on which Jones now relies. Jones thus created
3 the ambiguity as to "legal fees," so the court will construe the
4 provision against her, rejecting an interpretation that would make
5 the phrase applicable to litigation of disputes over the settlement
6 agreement. As a consequence, the court finds that the parties did
7 not intend to create an attorney's fees clause. Lacking a recognized
8 basis to shift the financial cost of litigation to Hurtado, the
9 motion fails.

10 CONCLUSION

11 For each of these reasons, Jones has not sustained her burden of
12 proof. The motion will be denied.² The court will issue a separate
13 order.

14 Dated: November 6, 2015

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17 Fredrick E. Clement
18 United States Bankruptcy Judge
19
20

21 ² Jones could have requested legal fees as a component of the debt
22 created by the settlement agreement. Fed. R. Civ. P. 54(d)(2)(A),
23 incorporated by Fed. R. Bankr. P. 7054(b)(2)(A) ("A claim for
24 attorney's fees and related nontaxable expenses must be made by
25 motion unless the substantive law requires those fees to be proved at
26 trial as an element of damages."). But she neither offered evidence
27 as to the amount of these fees, nor argued for an award of the
28 \$30,000.00 in her post-trial brief. Pl.'s Post-Trial Brief at 9:26-
10:2, filed Jan. 28, 2015, ECF No. 298. Instead, she made a
nonspecific request. "Plaintiff also requests her legal fees which
have been significant because of Defendant's many roadblocks,
including his personal bankruptcy that have [sic] prevented Jones
from timely resolving this matter." *Id.*

Instructions to Clerk of Court

Service List

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked ☐, via the U.S. mail.

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(if appointed in the case), and ☒ Other Persons

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